

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4062 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VELJIBHAI GOVABHAI & ANR.

Versus

RATHOD ENGINEERING WORKS & FOUNDERS

Appearance:

MR SHIRISH JOSHI for Petitioners

MR SHUKLA FOR MR SI NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioners by this Special Civil Application to the judgment of the Presiding Officer, Labour Court, Rajkot, dated 16th July 1983 passed in consolidated applications No.818/80 and 821/80, filed by them u/s.33C(2) of the Industrial Disputes Act, 1947.

3. The Labour Court has dismissed the applications of the petitioners under the impugned order. The facts which are necessary for disposal of this Special Civil Application, briefly taken, are that the petitioners were in service of the respondent and their services came to be terminated. The petitioners raised industrial dispute and the petitioners are in agreement that in the dispute raised by them, the Labour Court has decided the matter in their favour and the Award of reinstatement without backwages has been made. The case of the petitioners is that though the Award of reinstatement has been made, they were not allowed to join their services by the respondent. The petitioners filed applications u/s.33C(2) of the Industrial Disputes Act for computation of backwages for the period from 25th October 1979 to 30th April 1980. Those applications were dismissed under the impugned order. Hence this Special Civil Application.

4. The learned counsel for the petitioners contended that the Labour Court has committed serious illegality in rejecting the applications of the petitioners. It is a case where the respondent has not allowed them to join service in pursuance of the Award of reinstatement made in their favour by the Labour Court and as such, they are entitled for wages from 25th October 1979 to 30th April 1980.

5. On the other hand, the learned counsel for the respondent contended that the petitioners were not willing to join services as they are already in better employment elsewhere. They only wanted to create some evidence of their willingness to join the post but substance is that they did not want to join the post and only wanted to keep the matter alive. The learned counsel for the respondent further contended that the Labour Court has rightly rejected the claim of the petitioners and it is a matter which proceeded on the decision given on the question of facts and as such, this Court may not interfere with the Judgment of the Labour Court, sitting under Article 227 of the Constitution of India.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. Admittedly the Award which has been published on 15th October 1979. The reinstatement should have been made before 16th November 1979 as 30 days' time is there, from the date of publication for the employer to comply

with the Award. The petitioners have submitted joining report on 25th October 1979. It is not in dispute that 25th October 1979 was a Diwali holiday and the respondent was justified in saying that they may come to join the duty only after Diwali holidays. The Labour Court has rightly considered that this attempt on the part of the petitioners to submit joining report on Diwali holiday was an attempt to create evidence and was not a bonafide attempt to join duties. Then comes the joining report of the petitioners dated 4th November 1979. The respondent has given reply to the aforesaid joining report of the petitioners and they have come up with the case that how the petitioners wanted to create evidence without intention of joining duty. Then comes joining report of 7th November 1979 and 13th November 1979 which has been replied by the respondent. The respondent requested the applicants to report for duty at 8.00 am on 27th November 1979, but they have not reported in time on the said date. The respondent also requested the petitioners to come with their advocate so that no false excuses can be found out but that has not been done. The admitted facts are that the respondent has offered to reinstate the petitioners even during conciliation proceedings, but they declined to join the duty, may be on the pretext that unless backwages were paid to them they will not join. From the fact that the petitioners have declined to join duty when offered by the respondent during conciliation proceedings, it comes out that the petitioners were not in need of employment and they only wanted to keep the matter alive so that they may get backwages. The matter does not rest here. they have deliberately chosen to join duty after the Award of the Labour Court on Diwali holiday or on weekly holidays or after duty hours. In view of these facts, the Labour Court has not committed any error in holding that the petitioners are not prepared let go length of services they have put in with the respondent and at the same time they are not interested in reinstatement as they are getting much more wages at present. There is sufficient material on record also that inspite of request of the respondent, the petitioner did not report for duties in time and on the date as directed.

8. Taking into consideration the totality of facts of the case, I am satisfied that the Labour Court has not committed any error in holding that the petitioners are not entitled for back wages for the period from 25th October 1979 to 30th April 1980. However, it is made clear that the judgment of the Labour Court as well as of this Court in this Special Civil Application will have no relevance or binding effect or res-judicata for the claim

of the petitioners for reinstatement as well as for backwages for the period after 30th April 1980. If any such claim is made by the petitioners, the same shall be decided by the Labour Court in accordance with law without having any influence of the judgment in this case.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)